

NOT FOR PUBLICATION**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

In re LAURIE ANN SVIGEL, also
known as Laurie Ann McPherson,

Debtor.

BAP No. WY-07-020

LAURIE ANN SVIGEL,

Appellant,

Bankr. No. 06-20499
Chapter 13

v.

MARK R. STEWART, Trustee,

Appellee.

ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the District of Wyoming

Before McFEELEY, Chief Judge, CORNISH, and BROWN, Bankruptcy Judges.

CORNISH, Bankruptcy Judge.

The parties did not request oral argument, and after examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

Laurie Ann Svigel (“Debtor”) appeals an order of the bankruptcy court dismissing her Chapter 13 case for failure to file payment advices received within 60 days before the date of filing her petition. Because Debtor filed pay stubs

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

containing year-to-date information from her employer that included the 60-day period, we remand to the bankruptcy court to determine whether those pay stubs meet the requirements of 11 U.S.C. § 521(a)(1)(B)(iv).¹

BACKGROUND

Debtor filed her voluntary Chapter 13 bankruptcy petition on September 28, 2006. On October 27, 2006, Debtor filed two bi-monthly “payment advices” received from her employer. The first one gave the Debtor’s current pay for the period September 16, 2006, to September 30, 2006, including: net pay; gross pay; taxes; deductions; and year-to-date figures. The second one showed the Debtor’s current pay for the period October 1, 2006, to October 15, 2006, again, including: net pay; gross pay; taxes; deductions; and year-to-date figures.

On January 11, 2007, upon motion of Mark R. Stewart, the Standing Trustee, the bankruptcy court entered an Order Dismissing Case. Debtor’s case was dismissed pursuant to § 521(i)(1) and § 1307(c)(1) for failure to file payment advices received within 60 days before the date of filing the petition and for unreasonable delay by Debtor prejudicial to creditors. Debtor then filed a Motion to Reinstate Bankruptcy Petition (“Motion to Reinstate”) on January 17, 2007, arguing that the pay stubs she filed, which included year-to-date figures, were sufficient to meet the requirements of § 521(a)(1)(B)(iv). On January 22, 2007, Debtor filed a Notice of Appeal, appealing the bankruptcy court’s Order Dismissing Case. The bankruptcy court then entered its Order on Motion to Reinstate Bankruptcy Petition (“Order on Motion to Reinstate”) on January 25, 2007, denying the Motion to Reinstate. Additionally, on May 2, 2007, Debtor filed a Motion for Stay Pending Appeal.

¹ Unless otherwise indicated, all future statutory references in text are to the Bankruptcy Code, Title 11 of the United States Code.

JURISDICTION

This Court has jurisdiction to hear timely-filed appeals from “final judgments, orders, and decrees” of bankruptcy courts within the Tenth Circuit, unless one of the parties elects to have the district court hear the appeal. 28 U.S.C. § 158(a)(1), (b)(1), and (c)(1); Fed. R. Bankr. P. 8002. Neither party elected to have this appeal heard by the United States District Court for the District of Wyoming. The parties have thus consented to appellate review by this Court.

A decision is considered final “if it ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’” *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)). Here, the bankruptcy court’s dismissal of Debtor’s Chapter 13 case and its Order Denying the Motion to Reinstate mean there is nothing left for the bankruptcy court to do. Thus, its decisions are final for purposes of review.²

STANDARD OF REVIEW

The bankruptcy court entered its Order Dismissing Case pursuant to the automatic dismissal provision of § 521(i)(1) for failure to meet the requirements of § 521(a)(1)(B)(iv). Therefore, its determination involved a matter of statutory construction or a legal question. On appeal, we review legal questions *de novo*. *De novo* review requires an independent determination of the issues, giving no special weight to the bankruptcy court’s decision. *Salve Regina Coll. v. Russell*, 499 U.S. 225, 238 (1991).

² We note that because Debtor filed a Motion to Reinstate, jurisdiction remained with the bankruptcy court and tolled the appeal period for the bankruptcy court’s Order Dismissing Case, and, therefore, Debtor’s appeal could be considered premature. The proper procedure would have been for Debtor to wait for the bankruptcy court’s ruling on her Motion to Reinstate before appealing. Nevertheless, because the appealed order has now become final, and in the interests of fairness, we address the merits of Debtor’s appeal.

ANALYSIS

Pursuant to § 521(a)(1)(B)(iv), unless the court orders otherwise, the debtor is required to file:

(iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor[.]

If such information is not filed within 45 days after the date of the filing of the petition, then pursuant to §521(i)(1), debtor's "case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition."

It is undisputed that Debtor did not file "payment advices" showing current pay for any part of the month of August 2006, or the first half of September 2006.³ However, Debtor did timely file the two "payment advices" described above that showed year-to-date totals, which would include information contained on payment advices received within the 60 days prior to Debtor's filing of her petition. In her Motion to Reinstate, Debtor argued that filing a year-to-date document showing payment from an employer is sufficient to comply with the requirements of § 521(a)(1)(B)(iv), citing 4-521 *Collier on Bankruptcy* ¶ 521.09B, at 521-46 (Alan N. Resnick ed. 15th ed. rev. 2007). According to its Order on Motion to Reinstate, it appears that the bankruptcy court did not consider this argument, and thought it had no discretion to do so. Because the statute requires "payment advices *or other evidence of payment*," the Debtor's argument and any evidence should be considered by the bankruptcy court.

Additionally, on appeal, Debtor points to at least one bankruptcy court that has determined that year-to-date totals found on pay stubs constitute "other evidence of payment" sufficient to satisfy the requirements of § 521(a)(1)(B)(iv),

³ Apparently Debtor and counsel thought such pay stubs had been filed prior the January 10, 2007, hearing, and also thought they were attached to the Motion to Reinstate.

and prevent dismissal under § 521(i)(1). *In re Luders*, 356 B.R. 671 (Bankr. W.D. Va. 2006). In *Luders*, the bankruptcy court found that it was possible to calculate the information for the missing pay stubs that should have been filed from the year-to-date totals on the pay stubs that were provided. Our research indicates that at least one other bankruptcy court has followed *Luders*, utilizing the same line of thinking. *In re Tay-Kwamya*, No. 06-36098, 2007 WL 1175890 (Bankr. S.D.N.Y. April 23, 2007). Accordingly, the bankruptcy court erred in not considering whether the year-to-date pay stubs could meet the requirements of “other evidence” under § 521(a)(1)(B)(iv). Therefore, we remand the case to the bankruptcy court to make such a determination.

CONCLUSION

The bankruptcy court’s Order Dismissing Case is remanded for a determination as to whether the pay stubs provided by Debtor meet the requirements of § 521(a)(1)(B)(iv). Additionally, we deny Debtor’s Motion for Stay Pending Appeal because with the issuance of this order and judgment, it is now moot.